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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CARLEY E., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MELISSA E.,

Defendant and Appellant.

D040784

(Super. Ct. No. EJ2112)

APPEAL from an order of the Superior Court of San Diego County, Gary M.
Bubis, Referee. Affirmed.

Melissa E. (the mother) appeals a dispositional order removing her daughter, Carley E., from her custody. She contends there was not clear and convincing evidence that Carley was at substantial risk if returned to her care and argues there were alternatives short of removing her. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On June 26, 2002, the San Diego County Health and Human Services Agency (the Agency) petitioned under Welfare and Institutions Code section 300, subdivision (b)¹ on six-year-old Carley's behalf, alleging that since October 2001, Carley had been exposed to violent confrontations between the mother and Jeffrey E. (the father), the mother had failed to follow through on restraining orders against the father, and the parents used illegal drugs.

The social worker reported the mother said the family had been undergoing stress due to unemployment, eviction from their apartment and a recent suicide attempt by the mother's 17-year-old daughter, Katie Jo S. At the time Katie Jo was living in a mental health facility. The family was being evicted because of the father's drug use. The mother said the father had grabbed her and thrown keys and a stick of deodorant at her. She admitted using methamphetamine one month earlier. She was willing to accept services for the family problems, but did not want the father to leave the home because she needed him. The father reported he and the mother fight, and said he would like help with anger management and drug counseling, but could not pay for services. He said on May 30 police found methamphetamine pipes in the family car. He admitted driving Carley to school without a license while under the influence of drugs and alcohol, but said he and the mother do not use drugs in front of the children. Carley reported seeing

¹ All statutory references are to the Welfare and Institutions Code.

her parents hit each other and her dad drink. She appeared healthy and appropriately dressed.

The mother said she had obtained a restraining order against the father and asked if the children could come home. She said she had received a restraining order in November 2001, but it was dismissed. She got another restraining order in May 2002, but asked that it be dismissed because the father agreed to go to a substance abuse and batterers' program, although he later failed to go. She said Carley had seen only arguments, not physical abuse.

At the detention hearing on June 26, the court found there had been a prima facie showing that Carley came under the provisions of section 300, subdivision (b). The court ordered liberal supervised visitation, with the parents to visit separately.

The social worker recommended Carley remain out of the home until the parents showed significant progress in their reunification plans. The mother was attending programs and had obtained a restraining order against the father. Both parents had visited Carley at the Polinsky Children's Center. The father was attending classes, was employed and planned to begin AA meetings and a domestic violence program.

At the jurisdictional hearing on July 18, the parents submitted to the allegations and the court sustained the petition and made a true finding. The parents were ordered to participate in the Substance Abuse Recovery Management System (SARMS).

At the dispositional hearing on August 9, the parties stipulated if the mother were to testify she would say the father no longer lived in the home, she was participating in all services ordered for her and she believed Carley could be safely placed with her. The

court found by clear and convincing evidence return to the parents' custody posed a substantial danger to Carley. It gave the Agency discretion to allow unsupervised and overnight visitation and a 60-day visit and ordered Carley to undergo a psychological evaluation.

DISCUSSION

The mother asserts the court erred in finding by clear and convincing evidence that returning Carley to her custody presented a substantial danger to Carley's physical or emotional well-being. She urges this court to reverse the order and return Carley to her care while she completes services.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The mother has not made the requisite showing. The evidence shows a continued risk of domestic violence in the home. The mother told the social worker that the father began assaulting her in October 2001. In November 2001 the father and Katie Jo were fighting and when the mother tried to intervene she broke her finger. The mother said the father had grabbed her in the past, but explained his behavior by saying the bruises he

had inflicted were from times he was using drugs. When the social worker interviewed the father, he blamed the mother, saying she usually hit him and he grabbed her only when he tried to get away from her. Carley said the parents hit each other and the father "does drugs," but when asked what kind of drugs she said, "he drinks, nothing else." She said she is not afraid and feels safe.

The mother had been unreliable in the past about following up with restraining orders. The record shows domestic violence and her inability to distance herself from the father to protect herself and her children. On June 19, 2001, she took out a restraining order against the father, alleging he had grabbed her head, squeezed her and said he would have someone shoot her. She said she was afraid for herself and the children. Three days later she asked to have the restraining order rescinded. On June 3, 2002, she took out another restraining order, claiming the father was mentally and physically abusive. She alleged he choked her, threw her against doors and squeezed her, bruising her arms. Then, again, she immediately requested the order be rescinded. She told the social worker she had taken out the restraining order in an attempt to avoid being evicted. She had been in violent relationships before, including with Katie Jo's father, and she had taken out a restraining order against another boyfriend. She told the social worker there was no point in having the father leave because she would just find another man like him. After Carley was removed, she sought a third restraining order against the father and asked if the children could then come home. The social worker was of the opinion that the restraining order was only an attempt to get Carley home. When the mother learned that Carley was at a foster home, she wanted to cancel the restraining order so the father

could return home. On August 6, in the face of the restraining order, she went to see the father at work. She said she understood she was not supposed to see him, but she needed him to give her some money and saw no danger because he was not then using drugs. The coordinator at the mother's program on domestic violence reported the mother had attended four group meetings. The coordinator said it was too soon to know if the mother understood the dynamics of domestic violence.

The history of drug use in the home was also of concern. When Carley was first removed, the family was being evicted from their apartment because the father had been arrested for having methamphetamine pipes and marijuana in the family car. The mother admitted using methamphetamine and marijuana as late as May 2002. Although she was participating in programs to help her remedy the problems that required Carley's removal, including four classes each week at MITE-East County Regional Center, a weekly domestic violence victims support group at Crisis House, the FCS Program at the McAlister Institute and two NA meetings each week, the history of violence and drug use in the family home indicates that while she is making progress, returning Carley to her care at the time of the dispositional hearing would have been premature. The evidence supports the court's finding by clear and convincing evidence that return to the family home presented a danger to Carley.

Cases on which the mother relies do not require a different finding. In *In re Basilio T.* (1992) 4 Cal.App.4th 155, the evidence of violence was contradicted and hearsay and a child recanted his earlier reports. The Court of Appeal reversed, finding a lack of substantial evidence to support the court's finding. (*Id.* at p. 171.) Here, by

contrast, the parents submitted to the allegations of domestic violence and drug use in the petition. There was no question of the problems in the home. In *In re Steve W.* (1990) 217 Cal.App.3d 10, the perpetrator of the violence was in prison. The mother had established a separate residence and was self-supporting. (*Id.* at pp. 19-23.) Here, the mother is participating in services to remedy the problems that caused Carley's removal, but her past history has shown her inability to protect herself from domestic violence and her inability to stay away from the father. More time is needed for her to try to make the necessary changes before Carley can be returned home safely. Carley's removal from her care was warranted.

The mother also argues the Agency failed to prove there were no reasonable alternatives to protect Carley short of removal from the home. She suggests the court could have returned Carley to her under strict supervision and the Agency could have made unannounced visits to ensure that the father had not returned. In addition, she notes the court did not state facts on the record that supported removal as required by section 361, subdivision (d) and she voices concern that Carley is acting out in the foster home. Substantial evidence supports the finding there were no reasonable means to protect Carley short of removal from the home. The court's failure to state facts supporting the decision to remove was harmless error. The mother's history of requesting dismissals of restraining orders against the father and the fact that she has sought out the father even in the face of the most recent restraining order make it uncertain whether she would allow him to return to the family home. The mother admitted a history of abusive relationships and continued not to see a danger from the father. Her participation in domestic violence

and drug programs was still in its early stages and it was too soon to know whether she has a sufficient understanding of the dynamics of domestic violence to enable her to make the changes necessary to allow Carley to live safely in the home. Substantial evidence supports the court's dispositional order removing Carley from the mother's care.

DISPOSITION

The order is affirmed.

McCONNELL, J.

WE CONCUR:

KREMER, P. J.

HUFFMAN, J.